



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
ON THE 2nd DAY OF DECEMBER, 2021
BEFORE
HON'BLE MR. JUSTICE SANDEEP SHARMA
CRIMINAL REVISION No. 253 OF 2020

Between:

UMMER FAROOQUE SUHALI
KANDAK, S/O SH. AHMAD BAWA,
R/O PRESIDUM TOWER, 1ST FLOOR,
ATTAVAR, MANGALORE, KARNATAKA.

....PETITIONER

(BY MR. ANIRUDH SHARMA,
ADVOCATE)

AND

M/S DEWLITE INDUSTRIES,
VIDYA COMMERCIAL COMPLEX,
SECTOR-2, PARWANOO, DISTRICT SOLAN,
HP, THROUGH ITS PROPRIETOR-CUM-
AUTHORIZED PERSON SH. MAHESH PARSANA

....RESPONDENT

(BY MR. V.S. CHAUHAN, SENIOR
ADVOCATE WITH MR. AJAY SINGH
KASHYAP ADVOCATE)

Whether approved for reporting?.

This petition coming on for orders this day, the Court passed the following:

ORDER

Instant criminal revision petition filed under Section 397 Cr.PC
read with Section 401 of Cr.PC, lays challenge to judgment dated
25.2.2020, passed by the learned Additional Sessions Judge-I, Solan,

District Solan, HP, in Criminal Appeal No. 23-S/10 of 2019, affirming judgment of conviction and order of sentence dated 23.5.2019/25.6.2019, passed by the learned Additional Chief Judicial Magistrate, Court No1. Kasauli, District Solan, H.P., in Case No. 57/03 of 2017, whereby the learned trial Court while holding the petitioner-accused guilty of having committed offence punishable under Section 138 of the Negotiable Instruments Act (in short the "Act"), convicted and sentenced him to undergo simple imprisonment for a period of six months and pay compensation to the tune of Rs. 25,50,000/- to the complainant.

2. Precisely, the facts of the case, as emerge from the record are that respondent-complainant instituted a complaint under Section 138 of the Act, in the court of learned Additional Chief Judicial Magistrate-I Kasauli, District Solan, H.P., alleging therein that complainant-firm is a sole proprietorship concerned and deals in manufacturing/selling LED lights. Accused approached the complainant for purchase of LED lights to be executed by him in Karnataka. Accused sought financial assistance/loan to the tune of Rs.25,00,000/- from the complainant for the aforesaid project and as such, complainant considering his request, advanced Rs.25,00,000/- to the accused as friendly loan. Accused with a view to discharge his liability, issued two cheques bearing No. 174502 & 174501, dated 10.5.2017 & 10.6.2017 amounting to Rs. 15,00,000/- and

Rs. 10,00,000/- respectively, but fact remains that aforesaid cheques, on their presentation, were dishonoured with remarks "account closed". Since petitioner-accused failed to make the payment good within the time stipulated in the legal notice, respondent/complainant was compelled to initiate proceedings before the competent Court of law under Section 138 of the Act.

3. Learned trial Court on the basis of material adduced on record by the respective parties, vide judgment dated 23.5.2019/25.6.2019, held the petitioner-accused guilty of having committed offence under Section 138 of the Act and accordingly, sentenced him as per the description given herein above.

4. Being aggrieved and dissatisfied with the aforesaid judgment of conviction recorded by the court below, accused preferred an appeal in the court of learned Additional Sessions Judge-I, Solan, District Solan, H.P., which also came to be dismissed vide judgment dated 25.2.2020, as a consequence of which, judgment of conviction recorded by the learned trial Court came to be upheld. In the aforesaid background, present petitioner-accused has approached this Court by way of instant proceedings, seeking therein his acquittal after setting aside the judgments of conviction recorded by the courts below.

5. Vide order dated 11.11.2020, this Court, while suspending the substantive sentence imposed by the court below, directed the accused to deposit 30% of the fine/compensation amount, within a period of eight weeks. Though aforesaid order never came to be complied with, but during the proceedings of the case, this Court was apprised that parties have resolved to settle their dispute amicably inter-se them, whereby petitioner has paid sum of Rs. 25,50,000/- to the complainant as was awarded by the learned trial court.

6. Mr. Anirudh Sharma, learned counsel appearing for the petitioner states that since entire amount of compensation stands received by the respondent-complainant, this court while exercising power under Section 147 of the Act, can proceed to compound the offence and acquit the accused of the charges framed against him.

7. Mr. V.S. Chauhan, learned Senior Counsel, appearing on behalf of the respondent-complainant, on instructions, fairly acknowledges the factum with regard to the receipt of Rs. 25,50,000/- by the respondent complainant. He states that since respondent has already received the entire amount of compensation awarded by the court below, respondent shall have no objection in case prayer made in the instant petition for compounding offence is accepted.

8. Having taken note of the fact that entire amount of compensation stands received by the respondent-complainant and respondent has no objection in compounding the offence, this Court sees no impediment in accepting the prayer made on behalf of the petitioner for compounding of offence while exercising power under Section 147 of the Act as well as in terms of guidelines issued by the Hon'ble Apex Court ***in Damodar S. Prabhu V. Sayed Babalal H. (2010) 5 SCC 663***, wherein it has been categorically held that court, while exercising power under Section 147 of the Act, can proceed to compound the offence even after recording of conviction by the courts below.

9. Consequently, in view of the above, present matter is ordered to be compounded and impugned judgments of conviction and sentence dated 23.5.2019/25.6.2019 and 25.2.2020, passed by the courts below are quashed and set-aside and the petitioner-accused is acquitted of the charge framed against him under Section 138 of the Act. Interim order, if any, is vacated. Bail bonds, if any, discharged. Since respondent-complainant was unnecessarily dragged to institute the legal proceedings against the accused that too for realization of his own money, this court deems it fit to direct the accused to pay sum of Rs. 25,000/- to the respondent as litigation cost, payable within four weeks. Ordered accordingly. It is made clear that in case, aforesaid amount of Rs. 25,000/- is not paid within the time stipulated by this

court, accused besides rendering himself liable for penal consequences would also invite contempt proceedings. Accordingly, the petition is disposed of alongwith pending applications, if any.

2nd December, 2021
(manjit)

(Sandeep Sharma),
Judge

High Court of H.P.